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25 *Attorneys for Defendants X Corp., f/k/a*
26 *Twitter, Inc.; X Holdings; Elon Musk; and*
27 *Does*

28
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

COURTNEY MCMILLIAN and RONALD
COOPER,

Plaintiffs,

v.

X CORP., f/k/a/ TWITTER, INC.,
X HOLDINGS, ELON MUSK, Does,

Defendants.

Case No. 3:23-cv-03461-TLT

**DEFENDANTS' SURREPLY IN
OPPOSITION TO NON-PARTY
JACOB SILVERMAN'S MOTION TO
INTERVENE**

Judge: Trina L. Thompson
Magistrate Judge: Robert M. Illman

1 X Corp. (formerly known as “Twitter”), X Holdings Corp., and Elon Musk (collectively,
 2 “Defendants”) respectfully submit this surreply in opposition to non-party Jacob Silverman’s
 3 Motion to Intervene and Oppose Sealing Judicial Records (the “Motion to Intervene”). Dkt. No.
 4 96. Because Plaintiffs Courtney McMillian and Ronald Cooper noticed their appeal of the Court’s
 5 judgment in favor of Defendants on August 14, 2024 (Dkt. No. 109), this Court lacks jurisdiction
 6 to entertain the Motion to Intervene and should deny it.

7 As courts in the Ninth Circuit recognize, “[t]he basic general rule is that an appeal to a
 8 higher court ousts the jurisdiction of the lower courts.” *Assoc. Gen. Contractors of Cal. v. Sec’y of*
 9 *Com. of U. S. Dep’t of Com.*, 77 F.R.D. 31, 35 (C.D. Cal. 1977) (citing *Hovey v. McDonald*, 109
 10 U.S. 150, 157 (1883); *see also Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982);
 11 (notice of appeal confers jurisdiction on court of appeals and divests district court of jurisdiction)
 12 *Bryant v. Crum & Forster Specialty Ins. Co.*, 502 F. App’x 670, 671 (9th Cir. 2012) (same). “The
 13 same general rule applies in the context of a [d]istrict [c]ourt’s jurisdiction to grant a motion to
 14 intervene after an appeal has been taken.” *Assoc. Gen. Contractors*, 77 F.R.D. at 35; *see also*
 15 *Milliner v. Mut. Sec., Inc.*, 2019 WL 5067012, at *4 (N.D. Cal. Oct. 9, 2019) (denying motion to
 16 intervene where notice of appeal was filed); *Apple Inc. v. Samsung Elecs. Co.*, 2014 WL 12812431,
 17 at *1 (N.D. Cal. July 29, 2014) (similar). A notice of appeal divests the district court of jurisdiction
 18 even where, as here, “the motion to intervene had been filed *before* the notice of appeal.” *Stiller v.*
 19 *Costco Wholesale Corp.*, 2015 WL 1612001, at *1 (S.D. Cal. Apr. 9, 2015) (emphasis added); *see*
 20 *also Drywall Tapers & Pointers of Greater N.Y. v. Nastasi & Assocs. Inc.*, 488 F.3d 88, 94 (2d Cir.
 21 2007) (affirming denial of motion to intervene for lack of jurisdiction when intervention motion
 22 was not ruled upon before filing of notice of appeal); *Nicol v. Gulf Fleet Supply Vessels, Inc.*, 743
 23 F.2d 298, 298–99 (5th Cir. 1984) (same).

24 Because Plaintiffs’ notice of appeal divests this Court of jurisdiction, the Court cannot
 25 entertain the Motion to Intervene and should deny it.

1 Dated: September 9, 2024

MORGAN, LEWIS & BOCKIUS LLP

2 By /s/ Melissa Hill

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